

Deposition of:

Darryl T. Kon

February 01, 2024

JOSHUA SPRIESTERSBACH

v.

STATE OF HAWAII, et al.

Case No.1:21-cv-00456-LEK-RT



513-233-3000

depo@elitereportingagency.com

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF HAWAII

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6 JOSHUA SPRIESTERSBACH,)
7 Plaintiff,) Case No.
8 vs.) 1:21-cv-00456-LEK-RT
9 STATE OF HAWAII, et al.,)
10 Defendants.)
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15 Deposition of: DARRYL T. KON
(via videoconference)

16 Pursuant to: Notice

17 Date and Time: Thursday, February 1, 2024
1:33 p.m. EST

18 Place: 530 South King Street
Honolulu, Hawaii 96813

19 Reporter: Tracy L. Allen, RPR, RMR
(via videoconference)

20 Notary Public - State of Ohio

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25

1 APPEARANCES OF COUNSEL:

2

3 For the plaintiff:

4 Alphonse A. Gerhardstein, Esq.
(via videoconference)
5 of
6 Friedman, Gilbert + Gerhardstein
35 East Seventh Street
Suite 201
7 Cincinnati, Ohio 45202
513.572.4200
8 al@fggfirm.com

9

10 For the defendants Office of The Public
Defender, Nietzsche Lynn Tolan, Michele
11 Muraoka, Leslie Maloian, Jason Baker,
Merlinda Garma, and Seth Patek:

12

13 Justine T. Hura, Esq.
(via videoconference)
of
14 Department of the Attorney General
Tort Litigation
15 425 Queen Street
Honolulu, Hawaii 96813
16 808.586.1500
17 justine.t.hura@hawaii.gov

18

19

20

21

22

23

24

25

1 APPEARANCES OF COUNSEL:

2

3 For the defendants City and County of
Honolulu, and Officer Abraham K. Bruhn:

4

Richard D. Lewallen, Esq.
(via videoconference)
of

6 Department of the Corporation Counsel
Deputy Corporation Counsel
7 City and County of Honolulu
530 South King Street
8 Room 110
Honolulu, Hawaii 96813
9 808.768.5242
rlewallen@honolulu.gov

10

11

12 For the defendants State of Hawaii,
Department of Public Safety, Dr. John
13 Compton, Dr. Melissa Vargo, Hawaii State
Hospital:

14

Kendall J. Moser, Esq.
(via videoconference)
of
16 Department of the Attorney General
425 Queen Street
17 Honolulu, Hawaii 96813
808.586.1494
18 kendall.j.moser@hawaii.gov

19

20

21

22

23

24

25

1 APPEARANCES OF COUNSEL:

2

3 For the defendant Dr. Allison Garrett:

4 Nicholas Lee, Esq.
5 (via videoconference)
6 of
7 Roeca Luria Shin LLP
8 900 Davies Pacific Center
9 841 Bishop Street
10 Honolulu, Hawaii 96813
11 808.538.7500
12 nlee@rlhllaw.com

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1 I N D E X

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3 DARRYL T. KON PAGE

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EXAMINATION BY MS. HURA 70

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6 EXHIBITS MARKED REFERENCED

7 PLAINTIFF'S EXHIBIT 1 - 28
PLAINTIFF'S EXHIBIT 2 - 19
8 PLAINTIFF'S EXHIBIT 3 - 62
PLAINTIFF'S EXHIBIT 38 - 57

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1 THE REPORTER: We are on the record.

2 This is the remote deposition of Darryl
3 Kon. The time is approximately 1:33 p.m.
4 Eastern Standard Time, and the date is
5 February 1st, 2024.

6 Would counsel and everyone present
7 in each room please identify yourself for
8 the record?

9 MR. GERHARDSTEIN: Al Gerhardstein
10 for the plaintiff.

11 MR. MOSER: Kendall Moser for the
12 State of Hawaii, the Department of Public
13 Safety, and the Hawaii State Hospital.

14 MS. HURA: Good morning. Justine
15 Hura, deputy attorney general, for the
16 Office of the Public Defender defendants.

17 MR. LEE: And good morning,
18 everyone. This is Nicholas Lee. Present
19 for Dr. Allison Garrett.

20 MR. LEWALLEN: Good morning.
21 Richard Lewallen on behalf of the City
22 and County of Honolulu.

23 I'm here with Darryl Kon.

24 THE REPORTER: Does everyone agree
25 to and understand this deposition is

1 being taken remotely and that a remote
2 oath will be administered by a
3 stenographic reporter who is also a
4 notary in the State of Ohio?

5 MR. GERHARDSTEIN: Plaintiff agrees.

6 MR. MOSER: Yes.

7 MS. HURA: Yes.

8 MR. LEE: Yes.

9 MR. LEWALLEN: I agree, yes.

10 DARRYL T. KON

11 a witness herein, having been duly sworn, was
12 examined and deposed as follows:

13 EXAMINATION

14 BY MR. GERHARDSTEIN:

15 Q. Good morning, Mr. Kon.

16 A. Good morning.

17 Q. Please state your full name for the
18 record.

19 A. Darryl Takeshi Kon.

20 Q. And how do you spell your middle
21 name?

22 A. T-a-k-e-s-h-i.

23 Q. And what is your current employment?

24 A. Criminal investigator for the State
25 of Hawaii Attorney General's Office.

1 Q. How long have you done that?

2 A. About four years.

3 Q. So was there a gap between your
4 retirement from the police department and
5 starting this job?

6 A. Yes. A little more than a year.

7 Q. What did you do during that period.

8 A. Tried to retire.

9 Q. And why was that so hard?

10 A. Cost of living, just keep busy.

11 Just keeping busy.

12 Q. And what are your duties as a
13 criminal investigator for the attorney general?

14 A. It has recently changed, but I was a
15 felony level investigator at the airport,
16 Daniel K. Inouye Airport.

17 And now since the state is forming a
18 new department of law enforcement, we have been
19 reassigned our duties. And, basically, I help
20 out wherever I can.

21 Q. As an investigator, are you working
22 individual criminal cases?

23 A. More or less, yes.

24 Q. Okay. And who's your boss?

25 A. Supervisor boss or --

1 Q. Yeah.

2 A. Daniel Reed, R-e-e-d.

3 Q. What's his title?

4 A. Supervisory special agent.

5 Q. And then who's his boss?

6 A. There's a Garrett Maeda, who's a
7 deputy chief/special agent.

8 Q. And who's his boss?

9 A. Thomas Alipio, chief/special agent.

10 Q. Who's his boss?

11 A. Probably the attorney general
12 herself.

13 Q. Okay. With respect to the duties
14 you had working for the attorney general, have
15 you done any work at all related to the lawsuit
16 that brings us together today filed by Joshua
17 Spriestersbach?

18 A. No, not at all.

19 Q. Okay. And I understand that you
20 graduated high school in 1981; is that correct?

21 A. Yes.

22 Q. And you studied first aid and
23 helicopter repair in the military?

24 A. Yes.

25 Q. You were appointed to the Honolulu

1 Police Department on January 30, 1986?

2 A. Yes.

3 Q. And then take me through your career
4 at Honolulu Police Department. What were your
5 various jobs and what were your duties in those
6 jobs?

7 A. Besides initial training, recruit
8 school, FTO program, my first assignment was to
9 the receiving desk as an officer processing
10 custodies.

11 I then was transferred to Kalihi,
12 District of Kalihi. We call it District 5.
13 Worked there for approximately five years.

14 I made motor, what is called motor,
15 which is you get to drive your own car. I
16 worked in Kailua for one year. Transferred
17 back to Kalihi.

18 And in my sixth or seventh year I
19 transferred to a traffic fatal team where I did
20 traffic fatalities and other follow-ups for
21 about seven years.

22 I got transferred to narcotics/vice,
23 gambling detail. Had the shortest career
24 there. I got promoted to detective working CID
25 for approximately eight years. Handled

1 everything from auto thefts to robberies to
2 murders.

3 I transferred -- I made -- I
4 transferred to District 4 as a sergeant. It's
5 a blur. I'm sorry.

6 Q. You're doing fine.

7 A. Went to Waikiki for a short period
8 of time as a sergeant. I made lieutenant
9 something like in my 25th year. I don't
10 remember. Got assigned to records division,
11 then narcotics vice, I believe, then receiving
12 desk. All about one year, year and a half, two
13 years each. Then I ended up in ITD. And
14 somewhere in between I was a District 4
15 lieutenant, also.

16 Q. What do you mean by receiving desk?
17 You said that you started there.

18 A. As a rookie. As a rookie, that was
19 my first assignment. I was a -- from year and
20 a half to about two and a half years. I was
21 there maybe a year.

22 Q. Okay.

23 A. It was manually processing people.
24 We had typewriters back then.

25 Q. Where was that located?

1 A. That was at the old police station,
2 801 South Beretania Street. No. 1405
3 Beretania Street I believe is the old address.
4 The old Sears building.

5 Q. And CID, is that -- what does that
6 stand for?

7 A. Criminal investigation division.

8 Q. Did you serve as the officer in
9 charge of the receiving desk while you were a
10 lieutenant?

11 A. Yes.

12 Q. And when you served as the officer
13 in charge of the receiving desk while you were
14 a lieutenant, where was the receiving desk?

15 A. 801 South Beretania Street in the
16 basement, level one. I was the watch -- one of
17 the watch commanders. I'm not the D supervisor
18 of the receiving desk. I'm the watch
19 commander.

20 Q. Is that the central police station?

21 A. Yes.

22 Q. What does it mean to be watch
23 commander?

24 A. I'm in charge of approximately ten
25 officers on any given day and accept

1 responsibility and duties of whatever happens
2 at the desk, including accepting or
3 disapproving arrests, things of that nature.

4 Q. So if you are working as the officer
5 in charge of the receiving desk, does that mean
6 you're also, in your experience, the watch
7 commander?

8 A. Yes.

9 Q. And you said that you would accept
10 or disapprove of arrests. What's that mean?

11 A. On any given day an officer would
12 come in, must apprise the lieutenant in charge
13 of the arrest, of any injuries, et cetera,
14 regarding a custody.

15 I would have to determine if the
16 probable cause is acceptable, it matches what
17 the charges are on the -- what the person's
18 being arrested for is correct. Look at if it
19 was -- again, a narcotics vice, was it a bad
20 search, things like that. If things went
21 wrong, I would not accept the case.

22 Q. What happens if you did accept the
23 case?

24 A. Then it's a founded arrest.

25 Q. What happens to the suspect?

1 A. It depends on level of arrest you're
2 talking about from a traffic offense to a
3 felony. Traffic offenses are probably the
4 lowest that we handle. I determine bail or we
5 look at a bail sheet and we determine bail.

6 If it's a felony, I make sure that
7 the detective is assigned to the case, et
8 cetera.

9 There's various conditions and you
10 just have to adapt.

11 Q. If the arrest involves an arrest on
12 a warrant, what happens to the individual if
13 you determine that the arrest on the warrant is
14 a founded arrest?

15 A. Unfounded?

16 Q. No. You used the term founded I
17 thought.

18 A. Oh, founded. Okay.

19 Well, we examine the warrant and we
20 arrest the person on the power of the warrant,
21 make sure everything matches, birth date,
22 names, et cetera, on whatever the computer
23 gives us, and validate the warrant.

24 Q. And what do you mean, validate the
25 warrant?

1 A. Make sure it exists. You know,
2 sometimes the name is in the computer but the
3 warrant is not there and not accounted for, so
4 things like that have to be verified.

5 There's about five computer checks
6 that a watch commander does prior to accepting
7 the arrest from CJIS, driver's license, NCIC,
8 TROs. You can go as deep as you want to go;
9 sexual offenders.

10 You can do various checks before
11 accepting arrest and check for additional
12 warrants.

13 Sometimes the officers or police
14 dispatch misses a warrant or -- so you tell the
15 officer, can you please verify this additional
16 warrant?

17 Q. Okay. And assuming when you're
18 serving as watch commander and you determine
19 this is a valid arrest on a warrant, what
20 happens to the individual at that point?

21 A. He's processed through,
22 fingerprinted, mugged, and served the warrant.

23 Basically, that this warrant is the
24 reason for your arrest. It's issued by this
25 magistrate or judge. Your bail amount is here.

1 Feel free to call anyone that can bail you out,
2 including bondsman. And that's about it. It's
3 a very routine process.

4 Q. And that's something you did, I
5 assume, many times when you served as an
6 officer in charge of the receiving desk, right?

7 A. I do not personally serve the
8 documents. I have a crew that does that. I'm
9 more concerned with the administration portion
10 of the -- of the arrests.

11 Q. Right. But I mean, I assume that
12 you made this determination that arrests were
13 valid on multiple occasions in your career
14 as --

15 A. Yes, yes.

16 Q. Okay.

17 A. From a rookie to the last day. I
18 mean, you're always working at different points
19 of you -- either as an arresting officer, or in
20 my end of my career, I was the person asking
21 the questions.

22 Q. And when you're serving as officer
23 in charge of the receiving desk or watch
24 commander and you determine that an arrest on a
25 warrant was valid, would -- based on that

1 determination, would the person, if they didn't
2 make bail, would they go to some sort of
3 lockup?

4 A. Yes. So a court date will be set on
5 and he'll be given -- taken to court the next
6 available day.

7 Q. And prior to being taken to court,
8 where would the individual have been held in
9 2017?

10 A. At our main police station, central
11 receiving division, 81 South Beretania Street,
12 in a cellblock.

13 Q. So based on your determination as
14 the officer in charge of the receiving desk,
15 the individual arrested on a warrant, if you
16 determine it's valid, would be in that
17 cellblock until taken to court; is that fair?

18 A. Yes.

19 Q. And you didn't have to go to any
20 other supervisor or colleague to make the
21 determination that the arrest was valid,
22 correct?

23 MR. LEWALLEN: Objection. Vague and
24 ambiguous as to time and place and
25 person.

1 MS. HURA: Objection. Vague and
2 ambiguous as to having to go to
3 determine.

4 BY MR. GERHARDSTEIN:

5 Q. You can answer.

6 MR. LEWALLEN: If you understand the
7 question and you have an answer, you can.

8 A. If I was the only watch lieutenant
9 involved, then yes.

10 BY MR. GERHARDSTEIN:

11 Q. What did you review for this
12 deposition? Any papers? And don't tell me
13 anything you said to your lawyer or the lawyer
14 said to you. Okay?

15 A. The only thing I reviewed was the
16 OBTS.

17 Q. And what is that?

18 A. The arrest form that documents --
19 the receiving desk arrest form on each
20 individual that comes into custody. It's a
21 one-page, multi-line form.

22 Q. Is it called the arrest report?

23 A. I just refer to OBTS. I'm sorry.

24 If you can show it to me, I can tell
25 you if it is or not.

1 Q. Yeah. Let me just see.

2 And I take it you mean the OBTS
3 regarding Joshua Spriestersbach?

4 A. I believe that's his name, yes.

5 Q. Okay. Let me -- all right.

6 Do you see it on the screen?

7 A. I see a portion of it, yes.

8 Q. Okay. So have I scrolled through
9 the whole thing?

10 A. Yes.

11 Q. All right. And that's the document
12 you looked at prior to the deposition?

13 A. I believe so, yes.

14 Q. Okay. We'll get back to it.

15 MS. HURA: Mr. Gerhardstein, are you
16 marking that as an exhibit, and what is
17 the -- could you also --

18 MR. GERHARDSTEIN: I'm sorry. It's
19 already an exhibit. It's Exhibit 2 and
20 it is the last page of that exhibit,
21 Bates number C000220.

22 MS. HURA: Thank you.

23 MR. GERHARDSTEIN: Yeah. Thank you.

24 BY MR. GERHARDSTEIN:

25 Q. Without telling me anything you said

1 to your lawyer and anything your lawyer said to
2 you, who did you speak to about this
3 deposition?

4 A. I told my wife I got to come here.

5 That's about it.

6 Q. Okay. Well, I asked you if you had
7 any bosses and there are -- you forgot to talk
8 about that.

9 All right. Anybody else?

10 A. Zero.

11 Q. Okay. And do you have any of your
12 own records regarding Joshua Spriestersbach?

13 A. No.

14 Q. Did you keep any notes, when you
15 were working at the Honolulu Police Department,
16 your own diary or notebooks?

17 A. The OBTS, I kept a whole box in case
18 anything happened. But that's seven years ago
19 and at the end of my career, because nothing
20 happened, I basically chucked it.

21 Q. Okay. So you no longer have any
22 records of your own regarding your work at the
23 Honolulu Police Department; is that fair?

24 A. Yes.

25 Q. Were body-worn cameras in use before

1 you retired?

2 A. That's a good question. I don't
3 think so. If anything, it was -- if anything,
4 it was in the test phase.

5 Q. Okay. And you retired in what,
6 November of 2017?

7 A. Yes.

8 Q. Was there any incident that
9 triggered your retirement, or were you just
10 done?

11 A. I have my reasons to retire, yes.

12 Q. And what were they?

13 MR. MOSER: Excuse me, Lieutenant.
14 This is Kendall Moser. I object as to
15 relevance.

16 MS. HURA: I join. As well as,
17 although I have no standing, as to
18 confidentiality as to personnel --

19 MR. LEE: Join as well.

20 MS. HURA: -- as to personnel
21 records under 92F.

22 MR. LEWALLEN: Join as well.

23 BY MR. GERHARDSTEIN:

24 Q. Personnel files have already been
25 produced in this case.

1 You can answer.

2 A. I choose not to. I mean, I have my
3 reasons to retire like everyone else.

4 Q. Okay. Well, just tell me this; did
5 your reason for retiring have anything to do
6 with the working conditions at the Honolulu
7 Police Department?

8 A. What do you mean? The working
9 conditions are always -- there's always working
10 conditions.

11 Q. Yeah. So was --

12 MR. GERHARDSTEIN: Go ahead.

13 MS. HURA: Sorry. I'm just going to
14 object as to, again, confidentiality of
15 personnel records under 92F HRS, as well
16 as relevance. And vague and ambiguous.

17 MR. LEE: Join.

18 MS. HURA: Join as well.

19 BY MR. GERHARDSTEIN:

20 Q. Did your reason for retiring involve
21 anything to do with Joshua Spriestersbach?

22 A. Oh, no, not at all.

23 Q. Okay. When you were working at the
24 Honolulu Police Department, what training did
25 you receive on how to determine the identity of

1 a person who didn't have any paper ID or ID
2 card, no driver's license, no State ID; how
3 would you determine the identity of such
4 person? How were you trained to do that?

5 MR. LEWALLEN: Objection. Vague and
6 ambiguous.

7 To the extent you understand the
8 question and have an answer, you can
9 proceed.

10 A. If a person has fingerprints, I rely
11 on the fingerprints in the -- I believe it was
12 called the AFIS system.

13 BY MR. GERHARDSTEIN:

14 Q. Tell me about that. How did that
15 work?

16 A. I'm not trained in that.

17 Q. So how did you access it?

18 A. I did not access it. We have
19 officers that -- who are trained in it and
20 provide information to me.

21 Q. When an officer under your command
22 would take the fingerprints of a suspect,
23 how -- how much time would elapse before you
24 could learn the identity of that suspect by
25 virtue of the fingerprint being taken?

1 A. Well, sometimes -- that is also a
2 vague question. Sometimes it's instant.
3 Sometimes the internet is down. Sometimes the
4 machine is down. So it may take an hour, I'm
5 guessing. I mean, it does happen. I mean,
6 it's technology.

7 Q. Yeah. So assuming things are
8 working the way they're supposed to be working,
9 I know it doesn't always happen, but assume
10 that the fingerprint machine is working, assume
11 the internet's working, what was the normal
12 time that would elapse between taking someone's
13 fingerprints and receiving the information
14 about what the fingerprint told you about the
15 identity?

16 MR. LEWALLEN: Objection. Misstates
17 his testimony.

18 You can answer if you understand the
19 question.

20 A. Well, I'm not trained on it. The
21 officer has access to it. It is as fast as
22 they can work. I mean -- and get back to me.

23 So if you're asking how fast the
24 machine responds back, I do not know. I do not
25 operate the machine. Never been trained on it.

1 BY MR. GERHARDSTEIN:

2 Q. Well, I understand.

3 When you would rely on officers who
4 are trained on it, would you say that it was
5 typical, if everything was working, that you
6 could learn the identity of someone based on
7 the fingerprint within an hour?

8 MR. LEE: Objection. Improper
9 hypothetical.

10 MR. LEWALLEN: Join. Incomplete
11 hypothetical.

12 If you understand the question and
13 you have an answer, you can proceed.

14 A. It's not pertinent. I don't want to
15 answer. I'm not -- that's not my area.

16 BY MR. GERHARDSTEIN:

17 Q. And I'm only asking you based on
18 your experience. So when you, as the watch
19 commander, were wanting to learn the identity
20 of a person for whom --

21 A. I have a lot of experience on the
22 receiving desk. I have a lot of different
23 cases. Every case is different. So to say,
24 generically, you know, as a generic time, it's
25 not proper so I can't -- I can't give you an

1 answer and be accountable for that answer, so I
2 don't want to answer.

3 Q. Well, I understand every case is
4 different. And I'm only asking what your
5 typical experience would be if everything
6 worked the way it was supposed to work.

7 And I'm just looking to find out if,
8 in the way the system was set up, whether you
9 could find out the identity of a person based
10 on fingerprints within an hour or two.

11 A. Is that your statement?

12 Q. Well, I'm asking that, whether --

13 A. That is your statement, an hour or
14 two.

15 Q. Yeah. I'm asking if that is your
16 experience.

17 A. I've not seen that.

18 MR. LEWALLEN: I'm going to object.
19 Counsel is testifying and the witness has
20 stated what his answer is to the
21 question.

22 MR. LEE: Join in this objection.
23 It's also vague and ambiguous. It's an
24 incomplete hypothetical.

25 BY MR. GERHARDSTEIN:

1 Q. So if all you had was fingerprints
2 to identify a person, did you typically release
3 them because it took so long to get the results
4 back that you couldn't hold them?

5 MR. LEWALLEN: Objection. Vague and
6 ambiguous.

7 If you understand the question, you
8 may answer.

9 MR. LEE: We join in this objection.

10 MS. HURA: I'm going to join. And
11 also argumentative.

12 A. What do you want me to say? I mean,
13 I don't recall any case like that.

14 BY MR. GERHARDSTEIN:

15 Q. Okay. Are you aware of something
16 called a digital notebook?

17 A. No.

18 Q. Are you aware of a database that
19 officers would use that would have information
20 about suspects that were wanted and they could
21 review it so that if they saw those suspects,
22 they could make arrests out in the field?

23 A. I don't think it's an HPD file. I'm
24 not aware of it.

25 Q. I'm going to show you what's

1 previously been marked as Exhibit 1.

2 Does this document refresh your
3 recollection as to the existence of something
4 called the digital notebook?

5 A. No.

6 Q. Have you ever seen a printout like
7 this?

8 A. No.

9 Q. Are you aware of any database
10 available to officers that had photos of people
11 that were known to be in their area and
12 associated those photos with outstanding
13 warrants?

14 A. No.

15 Q. Was there any database that would
16 help -- that you know of, that would help an
17 officer learn whether somebody on his or her
18 beat was wanted on an open warrant?

19 A. No.

20 Q. You said when somebody did not have
21 an ID, like a State ID or a driver's license,
22 one thing you would rely on to identify them is
23 fingerprints, right?

24 A. That's one thing, yes.

25 Q. If the person gave you like personal

1 identifiers, name, date of birth, social
2 security number, what were some of the other
3 tools you had to identify people when they gave
4 you those types of personal information?

5 A. We have arrest procedures, arrest
6 record, we have driver's license check, we have
7 NCIC. There's about five computer checks I've
8 done on nearly every arrest that I refer to to
9 validate the information that the officer's
10 providing.

11 Q. Was CrimeStoppers one of them?

12 A. No.

13 Q. Did the officers that you worked
14 with rely on any information from
15 CrimeStoppers?

16 MS. HURA: Objection. Calls for
17 speculation.

18 MR. LEWALLEN: Join.

19 BY MR. GERHARDSTEIN:

20 Q. You can answer.

21 Do you know?

22 A. You would have to ask the officer.

23 Q. Okay. And from your knowledge, did
24 officers ever report to you that they had
25 relied on CrimeStoppers?

1 A. I answered that. No.

2 Q. Oh, okay. I'm sorry. I missed
3 that.

4 So CJIS, driver's license, NCIC.

5 That's three. You said there were five
6 computer checks. Do you know what the others
7 would be?

8 A. There's a driver's license file
9 itself.

10 Q. Okay.

11 A. There's a separate pull-down to
12 check for photos. There is a warrant file.
13 I'm not that current, but I know there's --
14 there's five. There's definitely five.

15 Q. Okay. Tell me about the warrant
16 file. How would you check that?

17 A. You just punch in the person's name
18 as LEQM on the State site, I believe. And all
19 the names will come out that are similar or
20 matches the person's name. If there's a typo,
21 it might -- it might show.

22 Also, it depends on I guess the
23 queue or whatever computer program, whoever
24 wrote the program, but it's -- it's a file that
25 has been in existence before I joined the

1 department in 1986. That is how old that
2 program is.

3 Q. Okay. And when you retrieved
4 information from that file, did it include a
5 photo of the person wanted on the warrant?

6 A. No. It was very antiquated. It was
7 before 1986.

8 Q. So what information would you get?

9 A. Person's name, birth date, social
10 security. I'm guessing -- I haven't seen that
11 file forever, probably the magistrate, the
12 amount of money, the district court issuing the
13 warrant, and all pertinent information that
14 would be found on the hard copy of the warrant.

15 Q. You mentioned you had worked in
16 records for a while.

17 Did you ever work in any capacity
18 where you provided information to the database
19 regarding warrants?

20 A. No. I'm the supervisor of the
21 personnel in the records division.

22 Q. Did some of those personnel maintain
23 the warrants database?

24 A. Yes. I know it's yes, but that
25 wasn't my area. Warrants belonged to another

1 lieutenant. I'm in records. Warrants is a
2 separate section.

3 Q. Okay. Did you ever serve as
4 supervisor of the section that was responsible
5 for maintaining the warrants database?

6 A. General question -- general answer,
7 no.

8 Q. Now, you said that toward the end of
9 your career you were at the central police
10 station and working as the officer in charge of
11 the receiving desk.

12 Can you just walk me through a
13 typical arrest and each step from the point
14 where a patrol officer would get to the door of
15 the police station with the suspect --

16 MR. LEWALLEN: Objection.

17 BY MR. GERHARDSTEIN:

18 Q. -- and what happens at the next
19 stage?

20 MR. LEWALLEN: Objection. Vague and
21 ambiguous as to typical.

22 MR. LEE: We join.

23 MR. LEWALLEN: If you understand the
24 question and have an answer, you can
25 proceed.

1 A. There's no typical arrest, period.

2 You got to adapt, adjust. There is no typical
3 arrest.

4 BY MR. GERHARDSTEIN:

5 Q. What is the -- tell me that about
6 each step in the booking process, each step
7 that immediately preceded your decision as the
8 officer in charge as to whether it was a valid
9 arrest?

10 A. I would have to ask of you to refer
11 to the policy of the receiving desk on the date
12 and time. You're asking seven years ago, you
13 know.

14 I'm going to miss some procedures.
15 I haven't made an arrest or gone to the
16 receiving desk in -- I've been there. I
17 haven't made any arrests in -- since
18 retirement.

19 Are you talking what type of arrest
20 from traffic to murders to shootings and
21 whatever else, to violence to -- there's so
22 many conditions, you just got to adjust.

23 The crew has to adjust. The
24 receiving desk crew is awesome. It gets spit
25 on, they got -- they take away weapons. You

1 cannot --

2 Q. Okay. I'm most interested --

3 A. -- answer the question.

4 Q. -- in the process involving a person
5 who would be arrested on an open bench warrant.

6 Okay?

7 Would that person have their mug
8 shot taken?

9 A. Would have their what?

10 Q. Would such a person, that is an
11 individual arrested on a bench warrant, have
12 their mug shot taken?

13 MR. LEWALLEN: Objection. Vague and
14 ambiguous as to time.

15 MR. GERHARDSTEIN: Oh, I'm sorry.

16 2017. Thank you.

17 MR. LEE: Join in this objection.

18 BY MR. GERHARDSTEIN:

19 Q. You can answer.

20 A. You would have to ask the receiving
21 desk crew to answer that.

22 Q. I'm --

23 A. Generally, yes. But there have been
24 cases where the person is so resistant, so
25 non-compliant, if that person had a recent

1 photograph taken of a recent arrest, it is --
2 to my knowledge, it is possible, not definite,
3 possible that the officer will rely on the
4 prior mug shot.

5 Q. Okay. So you said generally yes.

6 When a --

7 A. No. You're asking me a very general
8 question. Okay?

9 Q. Yeah?

10 A. I mean --

11 Q. And I understand that.

12 A. -- conditions change. Let's say if
13 it was for, let's say, a Class A felony or
14 something very serious, definitely a photograph
15 would be taken. Okay?

16 It is up to the officer. He has to
17 justify his work, his liability. I mean, he's
18 a professional, even though we don't have a law
19 degree or doctorate, but the officers are also.

20 Q. In your experience when a mug shot
21 is taken, what happens to that photograph?

22 Does it go into a database? Does it get
23 transmitted somewhere? What was your
24 experience with that?

25 A. I'm not an ITD person. I don't know

1 exactly where it goes.

2 Q. What about a person who is arrested
3 on a bench warrant, would that person normally,
4 absent any extraordinary circumstances, be
5 fingerprinted?

6 A. Personally fingerprinted?

7 Q. Yeah.

8 A. Yes.

9 Q. Okay. In your experience, what
10 happens with the fingerprint? Is that sent to
11 a database? Is that checked somewhere?

12 MR. LEWALLEN: Objection. Asked and
13 answered.

14 To the extent that you understand
15 the question and have an answer, you can
16 proceed.

17 A. I'm not trained in the fingerprint
18 verification. I just have information that the
19 officer tells me.

20 BY MR. GERHARDSTEIN:

21 Q. Okay. Was the fingerprint -- to
22 your knowledge, was the fingerprint
23 verification done at Honolulu Police Department
24 or done out in some other agency?

25 A. For 2017 it was taken at the

1 Honolulu Police Department. I do not know
2 where these other arrests would be.

3 Q. And then was the matching of the
4 fingerprint, any known print, was that process
5 done at the Honolulu Police Department?

6 MR. LEWALLEN: Objection. Asked and
7 answered.

8 To the extent that you understand
9 the question and have an answer, you may.

10 A. I'm just given the information back
11 from the officer.

12 BY MR. GERHARDSTEIN:

13 Q. So you didn't know who verified it;
14 is that fair?

15 A. It's a computer program. I did not
16 write the program.

17 Q. Was there any camera that recorded
18 events in the booking area of the central
19 police station?

20 A. Of course.

21 Q. And was there any policy on how long
22 the footage from those cameras was maintained?

23 A. I do not know.

24 Q. Were individuals at some point in
25 the process who had been verified as an

1 appropriate arrest by you as an officer in
2 charge of the receiving desk, were those
3 individuals given a wristband?

4 A. Would be a what? I'm sorry.

5 Q. Were those individuals given a
6 wristband, like ID bracelets?

7 A. The arrestee?

8 Q. Yes.

9 A. Of course, yes.

10 Q. Okay. And what information would be
11 on the ID bracelet?

12 A. I would think the person's name.

13 I've never written an ID bracelet. That's the
14 officer's duties.

15 Q. When you were serving as the officer
16 in charge of the receiving desk in 2017, was
17 there any normal shift that you worked?

18 A. Midnights.

19 Q. And when does that shift start and
20 end?

21 A. If I recall correctly, it starts at
22 9:30 p.m. and runs to 5:30 a.m.

23 Q. Do you know whether you were serving
24 as the officer in charge of the receiving desk
25 at 1715, at 5:15 p.m., on May 11th, 2017?

1 A. I think I was. The paperwork says I
2 was, but seven years ago, my memory's kind of
3 fading. So the answer is I do not know.

4 Q. Having looked at that arrest report
5 that you told me about, did that trigger any
6 recollection of the -- of the arrest of Joshua
7 Spriestersbach? Do you remember it, as you sit
8 here today?

9 A. I handle many arrests. I do not
10 know if I'm thinking of one arrest or another.

11 The issue with your document is
12 there's no -- I have no signature on it. It's
13 an electronic signature that another officer
14 placed there. There's no actual signature.

15 Q. So when you approved an arrest, are
16 you saying that your typical procedure would
17 involve physically writing your signature on
18 the form?

19 A. No.

20 Q. So how would you document your
21 involvement in approving an arrest?

22 A. When trusted officers would put my
23 name on it.

24 Q. Okay. And you mentioned that the
25 form we looked at -- which I'll bring up again.

1 And I'm showing you the part of the form, which
2 is Exhibit 2, Bates number C000220.

3 It has your name under Received By.

4 Do you see that?

5 A. Yes.

6 Q. And are you -- tell me, is there a
7 problem with that?

8 A. If you're asking for me to remember
9 it in detail, I do not. Based on information
10 provided, I'm guessing at an event that I do
11 recall part of it, but that's all I have.

12 I mean, seven years ago, a
13 document -- unsigned document, an officer, a
14 time that I don't normally work. I may have
15 come in on overtime on that shift, which was
16 common.

17 I think I know who Officer Bruhn is.

18 And at one point of time I did speak to him
19 about an arrest. But if it's the 2017 case
20 you're talking about, the exact date and time,
21 I can't say with certainty, but it was an
22 uneventful that -- on that particular day that
23 I met Officer Bruhn and I approved the
24 fingerprint portion of the arrest.

25 (Mr. Moser left the videoconference at

1 2:22 p.m. EST.)

2 BY MR. GERHARDSTEIN:

3 Q. Okay. Well, first of all, I'm
4 curious about your name on this line that says
5 Received By. Is there any problem with this --
6 association of your name on this line?

7 A. No, but there -- I have a problem --
8 issue with other portions of this document
9 which I'm not familiar with.

10 Q. Okay. Tell me what problem you have
11 with the other portions of this document.

12 A. If you scroll to the bottom --

13 Q. Okay.

14 A. -- you see the part that says
15 Submitted By at the very bottom?

16 Q. Yes.

17 A. Approved By on the next column?

18 Q. Yes.

19 A. I do not know who that person is.

20 Okay?

21 If you look at the ID Number,

22 Z00115 --

23 Q. Yes.

24 A. -- to my knowledge, that is not a
25 sworn officer ID number. It might be a records

1 person. It be might be somebody not connected
2 to the receiving desk. Or it might be somebody
3 temporary.

4 See the date on the far right,
5 August 25th?

6 Q. I do.

7 A. I don't know why August 25th is even
8 printed there. And you see the Synopsis right
9 above it, that big block?

10 Q. Yeah.

11 A. Lieutenant D. Chang approves the
12 following changes. I do not know -- it's
13 probably for court, but I do not know why it's
14 there.

15 I mean, I've never had to do that.
16 I guess the receiving desk crew does that. I
17 mean, I work midnights. That was in my area,
18 so I'm unfamiliar with those entries into this
19 OBTS, so --

20 Q. Okay. Well, that's helpful.

21 Normally, when you filled out these
22 documents, would you be the one who signs off
23 after the word submitted by?

24 MR. LEWALLEN: Objection. Vague and
25 ambiguous.

1 To the extent that you understand
2 the question that's being asked of you
3 and you have an answer, you may proceed.

4 A. I haven't typed an OBTS in years, so
5 I do not know how the computer system works.

6 BY MR. GERHARDSTEIN:

7 Q. Okay. In these forms that you do
8 recall, you're saying that you didn't know who
9 this person Cuba, Tierra-Lyn is and you're not
10 familiar with the ID number, I'm just asking
11 what would you expect in those portions of this
12 form?

13 A. I would expect an officer's name, an
14 officer's ID number, a rank, and a date and
15 time closer to the arrest date.

16 Q. So did you ever figure out who Cuba
17 is?

18 A. I didn't even know they had this
19 case going so I wouldn't know even where to
20 look for her.

21 Q. Okay. All right. And where it says
22 Received By Lieutenant D. Kon, is that your
23 employee number, 447450?

24 A. Yes.

25 Q. Did you type in your name and your

1 employee number, if you know?

2 I'm sorry. Did you answer?

3 A. No.

4 Q. And would you normally be the one
5 who types in your own name or number, or would
6 was something the staff would do?

7 A. The staff would do that.

8 Q. Now, you did say that you have some
9 recollection of talking to Officer Bruhn about
10 a case. Tell me just what recollection you
11 have and as best you can.

12 A. On one particular day I was asked to
13 come in early. Normally, we work four hours
14 earlier than normal.

15 I took over the desk from Lieutenant
16 Nakama -- G. Nakama. If this is the same
17 incident, the body was already there in
18 custody. Checks were already made by the
19 previous lieutenant and all we were waiting for
20 was the fingerprint verification to come back.

21 Within minutes, the verification
22 came back. I was now in charge of the desk.
23 The day watch receiving officer, I do not know
24 his name, came up and said, Lieutenant,
25 fingerprints are good and such-and-such.

1 Officer Bruhn came in, apprised me
2 of the arrest. Something about a person
3 sleeping in front of a doorway or something. I
4 don't know if he was called to the case or
5 what. There were no injuries. Nothing
6 outstanding. It was just a warrant arrest.

7 I said okay. Previous lieutenant
8 made all the checks, fingerprints are good. I
9 accepted the arrest.

10 Q. Would you say it was a warrant
11 arrest?

12 A. If that -- yeah. I don't think
13 there was any other connecting offense. I
14 believe it was a warrant arrest.

15 Q. And the officer in charge of the
16 receiving desk who did the previous searches
17 that you described, do you know who that person
18 was?

19 A. You would have to look at the -- it
20 says -- the OBTS says Officer S. Iwamasa,
21 Custodial Search and ID on the OBTS. But you
22 would have to ask him if he did it.

23 Q. Okay. And then who was serving as
24 the receiving desk lieutenant while that search
25 was being made, the immediate receiving desk

1 lieutenant before you?

2 A. Can you scroll up for the time of
3 the arrest?

4 Q. Sure.

5 A. I would have to examine this form
6 more, but the arrest came in on the previous
7 watch. I came in early, before the four hours.
8 And we were in transition.

9 The body came in on the prior watch.
10 The prior lieutenant was working at the time.
11 And about 1730 -- four hours -- 5:30 p.m.
12 probably. I'm thinking if it was just a
13 routine day, I would have been there, but I --
14 I know I had a conversation with the prior
15 lieutenant, if it's the same incident, and we
16 were just waiting for fingerprints. Everything
17 else was good.

18 So based on that, the body came in
19 on his watch.

20 Q. And, again, do you recall who that
21 person was that you're referring to?

22 A. Glen Nakama.

23 Q. This person here, Nakama?

24 A. He came in the next day and he -- if
25 you scroll down to the --

1 Q. Oh, yeah. Sure. He came in at
2 6:30 in the morning.

3 A. And he worked second watch and I
4 believe sent the body to court.

5 So, basically, he is working the
6 shift before me. I came in early and he
7 relieved me.

8 Q. What would the hours be of the shift
9 before you?

10 A. Probably 1:30 p.m. to 9:30 p.m. The
11 lieutenants came in early. The lieutenants
12 always came in early.

13 Q. And help me out. Are you saying
14 that Lieutenant Nakama was working from 1:30 --
15 the 1:30 shift on May 11th but left early and
16 you relieved him, and then he relieved you the
17 next morning as well?

18 A. Yes.

19 Q. Okay.

20 A. His exact time -- I do not know his
21 start time, but I was there to relieve him if
22 we are talking about the same day.

23 Q. So the incident that you're
24 recalling you said was a warrant arrest,
25 correct?

1 A. Yes.

2 Q. So the fingerprint work in a case
3 like that would involve checking the
4 fingerprints of the person in custody against
5 the fingerprints of the person wanted on the
6 warrant; is that correct?

7 MR. LEWALLEN: Objection. Asked and
8 answered.

9 To the extent that you understand
10 the question and have an answer, you may.

11 A. There are no fingerprints on the
12 warrant. There's fingerprints on the arrest
13 record.

14 BY MR. GERHARDSTEIN:

15 Q. Okay. But there's an individual
16 wanted on the warrant, right?

17 A. Yes.

18 Q. And my question is simply in terms
19 of process. One of your tasks as the officer
20 in charge of the receiving desk would be to
21 make sure you have the right person, you have
22 the person who truly is wanted on that warrant
23 in custody, right?

24 A. I would have to say that the person
25 matches, his database matches.

1 Q. What do you mean?

2 A. We can have people of different
3 names on an arrest record, generally speaking,
4 and the person's fingerprint has to be matching
5 to an exact person.

6 Q. Okay. And when you are verifying
7 the arrest of the person on a warrant, wouldn't
8 you agree that the person that is in custody
9 should match the fingerprints of the person who
10 is wanted on the warrant?

11 A. Of course.

12 Q. Okay. So in this case, we're
13 looking at the arrest report. And the arrest
14 is a revocation of probation. That's what the
15 warrant is about, right?

16 A. I've only seen this OBTS. What is
17 typed there, yes, revocation. If that's what
18 it is, that's what it is.

19 Q. Okay. Also in Exhibit 2, page
20 number C000219, is a copy of the warrant that's
21 referred to in that arrest report. Okay? And
22 I'm showing that to you now.

23 A. Yes.

24 Q. So the bench warrant that triggered
25 the arrest in this case was directed to a

1 person named Thomas R. Castleberry.

2 Do you see that?

3 A. Yes.

4 Q. So would you agree that in order to
5 make sure the arrest was valid, you would want
6 the fingerprints of the person in custody, the
7 person who was arrested, to match the known
8 fingerprints of Thomas R. Castleberry, right?

9 A. Yes. Yes.

10 Q. Okay. And do you know if that was
11 accomplished in the case you were thinking
12 about, the one that you remembered talking to
13 Officer Bruhn about?

14 A. I was informed by the young officer
15 at the receiving desk that the fingerprints
16 matched.

17 Q. And when you heard that, you
18 understood that to mean that the fingerprints
19 of the person you had in custody matched Thomas
20 R. Castleberry, the person on the warrant,
21 right?

22 A. Yes.

23 Q. Did you ever learn whether that was
24 inaccurate?

25 A. No.

1 Q. I'm going to show you the arrest
2 report again.

3 Do you see in the upper right-hand
4 corner, it says Verified By Prints?

5 MR. LEWALLEN: We cannot see that,
6 Al. It's blocked by the camera view of
7 the counsel.

8 MS. HURA: And, Mr. Gerhardstein,
9 can you please refer to the exhibit
10 number as well as the Bates stamp number?
11 Thank you.

12 MR. GERHARDSTEIN: Yeah. It's
13 Exhibit 2, C000220. I'll scroll.

14 Does that help at all? I'm not sure
15 what the problem is.

16 MR. LEWALLEN: I think I fixed it,
17 Al.

18 MR. GERHARDSTEIN: Oh, okay.

19 MR. LEWALLEN: I moved the icon,
20 so --

21 MR. GERHARDSTEIN: Oh, okay.

22 BY MR. GERHARDSTEIN:

23 Q. So in the upper right-hand corner of
24 this document, Exhibit 2, and it's the arrest
25 report, do you see where it says Adult Verified

1 By Prints?

2 A. Yes.

3 Q. What does that mean?

4 A. I guess adult verified by prints.

5 Q. Yeah. I'm just wondering in your
6 experience completing these forms, what does
7 verified by prints mean?

8 A. I don't see the form. I don't sign
9 the form. I don't know if it means -- if I saw
10 adult verified by prints.

11 The information is provided to me
12 verbally. An officer goes and types and
13 completes the form.

14 So I can't say I seen any forms like
15 this unless I'm working day watch, which is
16 rare and did not happen in this case. So I
17 can't say I -- I know this form or what the
18 form means. It's adult verified by prints. I
19 think that's the first time I've seen this
20 form.

21 Q. You refer to it as an OBT something.

22 Tell me again what that was.

23 A. Can you go to the top?

24 Q. Yeah. Are we there?

25 A. I don't know what it is. I always

1 called it OBTS. It's just what we referred to.

2 It's some acronym for this form.

3 Q. Okay.

4 MR. LEWALLEN: Excuse me, Counsel.

5 MR. GERHARDSTEIN: Yeah.

6 MR. LEWALLEN: Can we take a break?

7 I need a break myself personally. I need

8 to --

9 MR. GERHARDSTEIN: Sure.

10 MR. LEWALLEN: My arthritic knees,

11 SO --

12 MR. GERHARDSTEIN: So let's do

13 ten minutes?

14 MR. LEWALLEN: Ten minutes, please.

15 MR. GERHARDSTEIN: All right.

16 (A recess was taken from 2:42 to 2:53.)

17 BY MR. GERHARDSTEIN:

18 Q. Mr. Kon, do you know if there was a

19 job description written for the tasks you

20 performed as watch commander or officer in

21 charge of the receiving desk?

22 A. No.

23 Q. Well, does the no mean that you just

24 don't know or there is no job description?

25 A. There's no job description that I

1 know of.

2 Q. Okay. And in some departments there
3 would be a post order for the tasks associated
4 with watch commander or officer in charge of
5 the receiving desk. Is there such a document
6 that you're aware of?

7 A. Very generally speaking, when you
8 get promoted at any rank or accepted into the
9 police department, that is the only job
10 description I know of of -- of the rank. Not
11 of the specific job.

12 Q. So there's a job description for
13 lieutenant, but that's it; is that fair?

14 A. What is required for the interview
15 process. After that I do not know.

16 Q. Okay. So there's a job --

17 A. Promotion requirements.

18 Q. Like what your skills are supposed
19 to be or what the requirements are for the
20 position that you're interviewing for. Is that
21 what you're referring to?

22 A. I don't think it even has a skill
23 listed in it.

24 Q. Okay. So also in your years at the
25 police department, did you ever come across any

1 errors in the date of birth or other personal
2 identifiers in a report or record in the case
3 reporting system at the Honolulu Police
4 Department?

5 MR. LEWALLEN: Objection.

6 MS. HURA: Objection.

7 Go ahead.

8 MR. LEWALLEN: Vague and ambiguous.

9 Overly broad.

10 To the extent you understand the
11 question and have an answer, you may
12 proceed.

13 MS. HURA: Join.

14 MR. LEE: Join.

15 A. I don't have access to the CRS
16 system. I don't think I ever have.

17 BY MR. GERHARDSTEIN:

18 Q. Have you ever noticed any errors in
19 personal identifiers in police reports, you
20 know, incident reports or arrest reports?

21 MS. HURA: Objection.

22 MR. LEWALLEN: Same objection.

23 MS. HURA: Yes. Same. Join.

24 MR. LEE: Join again.

25 MR. LEWALLEN: You can answer if you

1 understand the question and have an
2 answer.

3 A. At the most, maybe a typo.

4 BY MR. GERHARDSTEIN:

5 Q. In terms of a typo, do you mean a
6 typo about like the date of birth or the height
7 or the --

8 A. No. No. More like my name, Darryl,
9 spelled with one R versus two or --

10 Q. Okay.

11 A. -- that kind of thing.

12 Q. Did you ever notice errors like in a
13 social security number or the State ID number?

14 MS. HURA: Objection. Vague and
15 ambiguous as to what you mean by errors.

16 Whose errors? What is that based
17 on? How would this witness identify any
18 of that?

19 MR. GERHARDSTEIN: Okay. You can
20 just do an objection without doing a
21 talking objection.

22 BY MR. GERHARDSTEIN:

23 Q. You can answer.

24 MR. LEWALLEN: I'm going to join in
25 the objection.

1 MR. LEE: Join as well.

2 A. I don't recall.

3 BY MR. GERHARDSTEIN:

4 Q. Did you ever have -- this is

5 Exhibit 38. It's Form 510.

6 Did you ever have occasion to use

7 this form to correct any personal identifiers

8 that were found to be inaccurate in any of the

9 reports you worked with?

10 A. This is the first time I've seen

11 this form.

12 Q. Were you ever trained on what to do

13 to correct any errors and inaccuracies with

14 respect to personal identifiers --

15 MR. LEWALLEN: Objection.

16 MS. HURA: Go ahead.

17 BY MR. GERHARDSTEIN:

18 Q. -- on police forms?

19 MR. LEWALLEN: Objection. Vague and

20 ambiguous. Overly broad. Calls for

21 speculation.

22 To the extent that you understand

23 the question and have an answer, you may.

24 MS. HURA: Join.

25 MR. LEE: Join in this, too.

1 A. I don't recall any incident as such.

2 BY MR. GERHARDSTEIN:

3 Q. No. My question is, were you ever
4 trained on that?

5 A. There are many things I have not
6 been trained on. I have not been trained on
7 that.

8 Q. Okay. You mentioned that you did
9 have this recollection of one particular arrest
10 involving a warrant that you talked to Officer
11 Bruhn about. I just want to be sure. Can you
12 tell me what you said to Bruhn and what he said
13 to you, as best you can recall?

14 MR. LEWALLEN: Take five. We're
15 having our monthly emergency broadcast
16 services here at Honolulu campus. This
17 will be over in a matter of seconds.
18 Apologies.

19 (Off the record.)

20 BY MR. GERHARDSTEIN:

21 Q. So the question was whether you
22 could tell me what you said to Bruhn, what he
23 said to you as best you can recall.

24 A. All I remember is something about
25 sleeping on the sidewalk in front of a door or

1 something as such. I don't know if he was
2 called or what to it. And that's about it.
3 That's what I recall from seven years ago.

4 Q. But I take it you also recall that
5 this was an arrest on a warrant, right?

6 A. Yeah.

7 Q. And --

8 A. The documents you showed me also
9 says it's a REVO/MOD, which I don't recall if
10 it's a REVO/MOD. You showed me documents I'm
11 just saying yes to.

12 Q. And there were no other charges with
13 respect to the arrest that Officer Bruhn talked
14 to you about, right?

15 A. Unless you show me another document,
16 I don't recall.

17 Q. Okay. And as you sit here today, do
18 you recall whether the arrest you talked to
19 Officer Bruhn about involved Joshua
20 Spriestersbach?

21 A. No.

22 Q. Okay. I did have an occasion to
23 look at your personnel file, which was produced
24 in this case under a protective order.

25 I did not see any performance

1 evaluations. Were you regularly evaluated in
2 the Honolulu Police Department?

3 A. Of course.

4 Q. So were there written performance
5 evaluations?

6 A. I made lieutenant. There must have
7 been some reports.

8 Q. Did you ever see any of the
9 performance evaluations related to your work?

10 A. I've signed -- I've signed --
11 electronically signed performance reviews.

12 Q. Okay. Did you ever -- were you ever
13 requested to get additional training in any
14 areas where you were deficient in your
15 performance?

16 MS. HURA: I'm going to object to
17 this line of questioning under 92F HRS,
18 and relevance.

19 BY MR. GERHARDSTEIN:

20 Q. You can answer.

21 MR. LEWALLEN: Join.

22 A. I don't know what you're asking.
23 You're always in training in some form.

24 BY MR. GERHARDSTEIN:

25 Q. Okay. Were you disciplined at all

1 for any of your conduct with respect to the
2 arrest of Joshua Spriestersbach?

3 A. Of course not.

4 Q. Were you told that you needed any
5 retraining with respect to any of the actions
6 you took with respect to Joshua Spriestersbach?

7 A. Of course not. I don't even know
8 who this guy is.

9 Q. Were you ever told that you did
10 anything wrong with respect to the arrest of
11 Joshua Spriestersbach?

12 A. Negative.

13 Q. And as you looked over the paperwork
14 that you did review, did you notice any
15 mistakes with respect to the arrest of Joshua
16 Spriestersbach?

17 MS. HURA: Objection. Calls for
18 speculation. Vague and ambiguous.

19 MR. LEWALLEN: Join.

20 If you understand the question and
21 have an answer, please provide it.

22 A. Only what I highlighted on the
23 signatures and other items.

24 BY MR. GERHARDSTEIN:

25 Q. And that involved not really being

1 clear on who that person was at the bottom of
2 the form, right?

3 A. The date and time.

4 Q. Right.

5 A. ID number, the person's existence.

6 Q. Okay. As a person who served as
7 watch commander and officer in charge of the
8 receiving desk, did you also fill out
9 evaluations of people under your command?

10 A. If I did, the only person I would
11 do, would be my responsibility, is the desk
12 sergeant.

13 Q. I'm sorry. I missed it.

14 A. There would be only one person I
15 would be responsible for and that's the desk
16 sergeant. And I don't recall.

17 Q. Did you work with more than one desk
18 sergeant?

19 A. Yes. I mean, we operate 24/7 so
20 there's always somebody else or --

21 Q. Now, I'm going to show you what's
22 been marked as Exhibit 3. And this is that
23 bench warrant, again, that was the basis for
24 the arrest we're talking about in this case.

25 And do you see the exhibit on the

1 screen?

2 A. Yes.

3 Q. And do you see where in handwriting

4 it says, AKA: Spriestersbach, Joshua C?

5 A. Yes.

6 Q. In this case, do you know why his

7 name was written on this copy of the bench

8 warrant for Thomas Castleberry?

9 A. You would have to ask the person who
10 wrote it. Seven years ago I can guess why it's
11 written, but I don't think I saw the warrant.

12 I see the data. I hear what the officer tells
13 me, but they don't say, here's the warrant,
14 Lieutenant.

15 Q. In this case, apparently the City
16 database listed Thomas Castleberry -- or Joshua
17 Spriestersbach as an alias for Thomas
18 Castleberry. Okay? You can assume that. All
19 right?

20 A. Assume it from your info?

21 Q. Yeah.

22 A. Okay.

23 Q. So if that's so, when you have an
24 alias, is it appropriate to write, like, the
25 alias name on the bench warrant, if you know?

1 A. Appropriate? I can't answer that.

2 I know if the identify -- information provided
3 by the officers to receiving desk crew matches
4 the warrant, including the alias, I approve the
5 warrant. As far as writing the name in, I
6 can't say it is or isn't.

7 Q. So what does it mean to approve the
8 warrant?

9 A. The computer -- computer information
10 matches, fingerprint matches, everything
11 matches to the warrant. The name on the
12 warrant, or whatever is connecting information,
13 is on the warrant.

14 Q. So in this case, the person on the
15 form -- let's go back to that -- on the arrest
16 report, is Joshua Spriestersbach.

17 So how -- how do you -- when you
18 have a person in a situation like this where
19 the person that you've arrested as the
20 defendant is not the name on the warrant, does
21 that trigger like some responsibility, or what
22 do you do about the warrant for a person of a
23 different name?

24 MR. LEWALLEN: Objection. Vague and
25 ambiguous question.

1 If you understand it, you may
2 answer -- and have an answer.

3 A. I have a general answer but it's not
4 worth even saying, so -- you just got to -- you
5 just got to adapt to the information provided.

6 Whatever is provided, that is what you go on.
7 Whatever the computer shows, whatever the
8 fingerprint shows, what a common person, a
9 reasonable person would understand, that is
10 what -- that's what we do.

11 If there's any -- if there's -- I'm
12 not done. If there's --

13 Q. Okay.

14 A. -- disreption (sic) on a simple
15 warrant, I would have let him go. Okay? But
16 everything came back with the lieutenant before
17 me, his checks all came out. All we did was
18 the fingerprints. That was all I had to do.

19 So so long as the fingerprints came
20 back matched or unmatched, I would have made my
21 decision on that.

22 Q. Okay. If the fingerprints of Joshua
23 Spriestersbach did not match those of Thomas
24 Castleberry, what would you have done?

25 MR. LEWALLEN: Objection. Calls for

1 speculation. Incomplete hypothetical.

2 MR. LEE: Join.

3 A. I don't understand. You show me the
4 prints in front of me, the conditions, okay.
5 You verbal -- I don't know who you're talking
6 about, John Doe 1, John Doe 2.

7 I mean, the information on the CJIS,
8 the fingerprints attached to the CJIS,
9 everything matched. And that is only if it's
10 the same case that I recall. There were no
11 issues.

12 BY MR. GERHARDSTEIN:

13 Q. So in this case, is it your
14 recollection that the person listed as the
15 defendant, Joshua Spriestersbach, was viewed by
16 you as being the same person as Thomas
17 Castleberry?

18 A. I don't know. I don't remember his
19 name.

20 Q. Okay. If you were under the
21 understanding that a person arrested was using
22 an alias for the person wanted on the warrant,
23 would that -- would it be appropriate then to
24 hold the person simply because he was listed as
25 an alias for the person wanted on the warrant?

1 MR. LEWALLEN: Objection.

2 Incomplete hypothetical. Calls for
3 speculation. Vague and ambiguous.

4 If you understand the question and
5 have an answer, you may answer.

6 MS. HURA: Join.

7 MR. LEE: Join in this.

8 A. You should be talking more specific,
9 especially in this case. I'm not going to
10 answer a general question.

11 You always got to adapt to the
12 conditions provided. Okay? You always got to
13 adjust. Okay?

14 It's not cut and dry. It's not like
15 reading a book or reading -- Monday morning
16 quarterback. Okay? It's nothing like that.
17 You got to make decisions, you got to adjust,
18 and that's it.

19 BY MR. GERHARDSTEIN:

20 Q. Would you agree that the person in
21 your custody in this case, Joshua
22 Spriestersbach, would have to have fingerprints
23 that matched Thomas Castleberry for you to say
24 that's a valid arrest on Thomas Castleberry's
25 warrant?

1 MS. HURA: Objection.

2 MR. LEWALLEN: Objection.

3 MS. HURA: Go ahead.

4 MR. LEWALLEN: Vague and ambiguous.

5 If you understand the question.

6 MS. HURA: Objection. Assumes --

7 join that one. Assumes facts not in
evidence.

9 The witness has already asked and
10 answered -- has already answered this
11 question.

12 MR. LEE: We join in the objection
13 by both counsel. Thank you.

14 BY MR. GERHARDSTEIN:

15 Q. You can answer.

16 A. I do not know.

17 Q. Well, isn't that the task, though,
18 of the officer in charge of the receiving desk
19 to make sure that the fingerprints of the
20 person in custody actually match the one -- the
21 person who you're seeking to arrest on the
22 warrant?

23 MS. HURA: Objection.

24 Argumentative.

25 It's not the same question. The

1 hypothetical has changed.

2 MR. LEE: Join.

3 MR. LEWALLEN: Join.

4 BY MR. GERHARDSTEIN:

5 Q. You can answer.

6 A. I'm getting thrown off by

7 Castleberry and Spea -- whatever his name is.

8 So when the officer says to me

9 fingerprints match, fingerprints match the
10 warrant, 10-4, arrest is good. All other data
11 matches, birth date, social, whatever is given
12 matches, good. I mean, if those conditions are
13 met, everything's good.

14 And as far as that particular case,
15 I remember an officer, in my memory, saying
16 fingerprints are good.

17 As far as what data he was referring
18 to exactly, I interpreted it as being the
19 person on the warrant.

20 MR. GERHARDSTEIN: Okay. I don't
21 have any other questions.

22 Thank you, Mr. Kon. Other counsel
23 may have questions.

24 MS. HURA: Mr. Lee, do you have
25 questions?

1 MR. LEE: I do not, Ms. Hura.

2 MS. HURA: Thank you.

3 EXAMINATION

4 BY MS. HURA:

5 Q. I just have, I think, a couple maybe
6 clarification questions about acronyms, I
7 think.

8 So good morning. My name is Justine
9 Hura. I represent the Office of Public
10 Defender defendants in this lawsuit and I work
11 for the Department of the Attorney General.

12 I did want to ask -- you mentioned
13 the acronym ITD, I believe, as part of what
14 your job was working for the City and County or
15 the Honolulu Police Department.

16 Do you recall that acronym and what
17 it stands for?

18 A. Yes. Information technology -- I
19 don't know if it's development or division.
20 It's the computer section, database section of
21 the internals of the police department.

22 Q. Okay. Is that attached to internal
23 affairs or no?

24 A. No, no, no, no. No. Like it's the
25 computer guy. That's all.

1 Q. Okay. And then you mentioned, if

2 I'm not mistaken, LEQM?

3 A. Yes. That is a command. I do not
4 know the acronym for it, but it is -- the
5 warrant -- we check for warrants under the old
6 City's or State's driver's -- there's several
7 commands in that program on the system. It's
8 one of the oldest computer systems we have. We
9 do driver's license checks, warrant checks. I
10 don't know what else, but there's like ten
11 commands that we can find.

12 MS. HURA: Okay. And then -- I
13 think those are my questions. Thank you.

14 MR. GERHARDSTEIN: All right.

15 MR. LEWALLEN: I have no questions.

16 MR. GERHARDSTEIN: Thank you very
17 much, sir.

18 THE WITNESS: Thank you.

19 MS. HURA: Thank you.

20 THE REPORTER: Wait a minute.

21 Signature to the deposition?

22 MR. LEWALLEN: Yes, please. If you
23 will send it to me, and we'll forward it
24 to Mr. Kon for his review.

25 THE REPORTER: Okay. Justine, do

1 you want a copy?

2 MS. HURA: Yes, please. Ordinary
3 course. Thank you.

4 MR. LEWALLEN: Same for me.

5 THE REPORTER: Mr. Lee?

6 MR. LEE: We're not going to order a
7 copy of this. Thank you.

8 THE REPORTER: Okay.

9

10

DARRYL T. KON

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- - -

14 DEPOSITION ADJOURNED AT 3:20 P.M.

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1 C E R T I F I C A T E

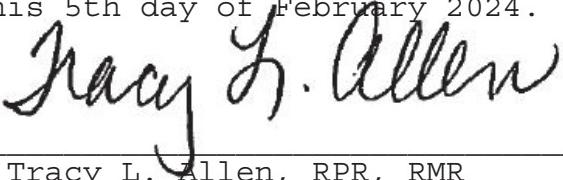
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3 STATE OF OHIO :
4 COUNTY OF HAMILTON : SS

5

6 I, Tracy L. Allen, RPR, RMR, the
7 undersigned, a duly qualified and commissioned
8 notary public within and for the State of Ohio,
9 do certify that before the giving of his
10 deposition, DARRYL T. KON was by me first duly
11 sworn to depose the truth, the whole truth and
12 nothing but the truth; that the foregoing is
13 the deposition given at said time and place by
14 DARRYL T. KON; that I am neither a relative of
15 nor employee of any of the parties or their
16 counsel, and have no interest whatever in the
17 result of the action.

18 IN WITNESS WHEREOF, I hereunto set my
19 hand and official seal of office at Cincinnati,
20 Ohio, this 5th day of February 2024.

21 
22

Tracy L. Allen, RPR, RMR
Notary Public - State of Ohio
My commission expires July 29, 2028.

24

25

1 E R R A T A S H E E T

2 DEPOSITION OF: DARRYL T. KON
TAKEN: FEBRUARY 1, 2024

3

4 Please make the following corrections to my transcript:

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6 Page Line Number Correction Made

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25 Witness Signature Date

Date

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